IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.752 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

KALPESH GUNWANTLAL SONI
VERSUS
STATE OF GUJARAT & ORS.

Appearance:
MS KRUTI M SHAH for Petitioner
MR MUKESH PATEL, APP, for Respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:30/12/1999

C.A.V. JUDGMENT

#. Rule. Mr.Mukesh Patel waives service of Rule on

behalf of respondents.

#. The petitioner, Convict No.75048, undergoing sentence at Central Prison, Vadodara, by this writ petition under Article 226 of the Constitution of India, is praying for declaration that he is entitled to furlough leave and for direction to the respondents to grant him earned furlough which became due in the year 1997 and 1999 on any suitable condition which this Court may deem fit, just and proper. Prayer has also been made for quashing and setting aside of the order dated 25th June 1999 passed by Dy.I.G. Prison, Gujarat State, Ahmedabad, under which his prayer for releasing him on furlough leave has been declined.

#. The facts of the case are that the petitioner was prosecuted by Kapadwanj Police Station for the offence punishable under Section 302 of the Indian Penal Code. The learned Sessions Court, Nadiad, under its judgment and order dated 4.5.1992, convicted the petitioner and sentenced him for life imprisonment. Against this judgment of the learned Sessions Judge, Nadiad, the petitioner preferred Criminal Appeal No.465 of 1992 in this Court and that came to be dismissed by the Division Bench (Coram: R.K.Abichandani & K.R.Vyas, J.J.) on 29.6.92, meaning thereby, the conviction and sentence ordered against the petitioner by the learned trial Court has been confirmed.

#. The petitioner enjoyed two parole leaves. On second parole leave, the petitioner surrendered late by 1159 days, i.e. from 23rd July 1993 to 24th September, 1996. he remained absconded. This parole leave was granted from 5.7.93. It is the say of the petitioner that on 24th September 1996, he voluntarily surrendered before the jail authority at Porbandar. For this late surrendering and overstay of the petitioner, the competent authority, Deputy I.G., Gujarat State, Ahmedabad, in exercise of powers conferred upon it under Section 48-A of the Prisons Act, 1894, as amended by Bombay (Prison Amendment) Act, 1953, imposed the following punishments on the petitioner:

(i) He was deprived from enjoying two furlough leaves earned by him.

(ii) Cut of 114 days in remission was imposed.

(iii) Forfeiture of deposit amount of Rs.500/= was ordered.

#. The petitioner applied for furlough leave, which as per his case became due on 13th July 1997 and 13th July 1999, but under the impugned order, the same has not been granted. Hence this petition before this Court. A copy of the impugned order made by the Deputy Inspector General of Prisons, Gujarat State, Ahmedabad, is on the record of the Special Criminal Application.

#. The respondents have filed reply to the Special Criminal Application and therefrom I find that the petitioner was released on parole for two times. First from 8.8.92 to 14.8.92 for seven days and he reported in time. Second for period from 6.7.93, for seventeen days, but he late surrendered by 1159 days on 25th September 1996. For this late surrender, remission of 114 days has been cut-off and two furlough were ordered to be forfeited. Reference has been made to the decision given by this court in Special Criminal Application No.328 of 1986 where this Court has said that on the basis of own act or misconduct of the prisoner, furlough application can be rejected. It is mentioned in the order that his applications for furlough leave are rejected as per Rule 4(5) and (6) of the Parole - Furlough Rules, 1959 and as per the judgment of this Court.

#. Ms.Kruti M.Shah, learned counsel for the petitioner contended that for late surrendering, the petitioner-prisoner has sufficiently been punished. On becoming due of the furlough leave, this benefit could not have been denied to him only on the ground of his late surrendering, otherwise, it will amount to double penalty. Ms.Shah, carrying this contention further, submits that in case it is permitted then this petitioner will not get any furlough leave for further two years. The very object and purpose of grant of parole and furlough leaves will be frustrated. Ms.Shah next contended that three penalties which have been given to the petitioner for late surrender are highly excessive and unjustified. While considering the matter of imposing of the penalty upon the prisoner for late surrendering the authority has to consider over all facts of the case and where the prisoner has given satisfactory explanation for his late surrendering, the penalty should not have been as a rule or right. However, in her submission three penalties which have been given are highly excessive and disproportionate to this conduct of the petitioner. Alternatively, Ms.Shah contends that at the most, one furlough could have been ordered to be forfeited and not two. Lastly, it is contended that even if while imposing penalty for late surrendering forfeiture of furlough leaves is order still in later

point of time, looking to the conduct of the petitioner in jail, his antecedents and purpose and object of Parole - Furlough Leave Rules, the matter could have been reconsidered and the petitioner could have been allowed to avail of the furlough leaves or at least one furlough leave. In support of this contention, Ms.Shah placed reliance on the Full Bench decision of this court in the case of Bhikhabhai Devshibhai v. State of Gujarat reported in 1987(2) GLR 1178 and Division Bench decision of this Court in the case of Bhupat Vira v. State of Gujarat, reported in 1987(1) GLR 596.

#. Mr.Mukesh Patel, learned A.P.P. for the State contended that furlough leave is not absolute right of the prisoner. In support of this contention, he made reference to the provisions as contained in Parole Furlough Leave Rules. The competent authority, for the satisfactory reasons, declined to grant furlough leave to the prisoner. Where due to the conduct of late surrender release of the prisoner on furlough is not considered to be in the larger interest of the society, this prayer can be declined. Next Shri Patel contends that this conduct of late surrender by the petitioner by 1159 days is very serious. He has not furnished any explanation, good, bad or indifferent for this late surrender and after considering the matter the competent authority has rightly imposed the penalty of forfeiture of two furloughs. He contends that this Court has not laid down nor any provision of the Prisoners Act or Parole Furlough Leave Rules contemplate that for late surrender or for some other serious misconduct, the competent authority has no jurisdiction to impose penalty of forfeiture of furlough leaves. Mr.Mukesh Patel submits that even from two decision on which reliance has been placed by learned counsel for the petitioner, it is clearly borne out that forfeiture of furlough leave can be ordered by the competent authority in case where the conduct of the prisoner is of such a nature. It has next been contended that two other penalties given in sum and substance are not penalties for the reason that the petitioner has been convicted and sentenced for life imprisonment. For the convict of lifer, this forfeiture of remission is of no consequence and similarly so far as second punishment of forfeiture of deposit is concerned, it is not in fact a punishment but a routine order which has to be passed. It is in fact a consequential order for not surrendering by prisoner in time. So for this late surrendering of 1159 days, only penalty has been given by competent authority is of forfeiture of two furloughs. In his submission, when two furloughs were ordered to be forfeited and the first furlough became due on 13th July

1997 and second on 13th July 1999, both are already forfeited and the application filed by petitioner for grant of furlough leave for these two dues is wholly misconceived and misplaced. In pursuance of the order passed earlier by the competent authority these two furlough leaves stood automatically forfeited and the petitioner could not have been given benefit of the same. Carrying this contention further, Mr.Mukesh Patel submits that the petitioner has not challenged the order passed by the competent authority in the year 1996 of forfeiture of two furloughs leaves for his late surrender and by now filing this application for grant of furlough leave, he cannot question this very order. Lastly, it is submitted that both the cases on which reliance has been placed by learned counsel for the petitioner are not applicable to the facts of this case. There furlough leave was not ordered to be forfeited for late surrendering and only on the ground of late surrendering by the prisoner concerned therein, the furlough leave which otherwise fell due and could have been availed of has been denied and in that context of the facts, decisions have been given. Ratio of the decision is to be read and taken in the facts of that case in his submission. Concluding his submissions Mr.Mukesh Patel submits that in case now these two furloughs leaves are granted to the petitioner, then the very order passed in the year 1996 will stand recalled though it was not challenged by petitioner at any point of time. Secondly, this late surrendering will be of no consequence and it will encourage prisoners for late surrendering after parole or furlough leave, which is not in the larger interest of discipline in jails.

#. I have considered the rival contentions made by learned counsel for the parties.

##. First of all, I consider it appropriate to deal with the two decisions of this court on which reliance has been placed by learned counsel for the petitioner. The first case is of Full Bench of this court in the case of Bhikhabhai Devshibhai v. State of Gujarat. Before the Full Bench of this Court, the matter had come for interpretation of Rule 4(10) of the Prisons (Bombay Furlough & Parole) Rules, 1959. The Court has considered whether the word `shall' as used in the Rules aforesaid is mandatory, more particularly in its latter part, or whether the word `shall' be considered as `may' so as to enable the prison authorities to consider the request for furlough of prisoner who has surrendered late after release on furlough or parole. After considering all the aspects, the Full Bench has held that in the context of the later part of Rule 4(10), "the word, `shall' will

have to be read as `may' and `directory'. The prison authorities cannot reject as ineligible the request of due furlough of the prisoners who have surrendered late in past. The authorities have the power and duty to consider grant or refusal of such furlough due to the prisoners, having regard to the facts and circumstances of the case including the fact that the prisoner had surrendered late in past". That would be the relevant fact to be taken into account. Further relevant fact to be taken into account will be the view taken regarding the gravity of offence while imposing punishment under Section 48A of the Prisons Act read with Rule 1287 of the Jail Manual.

##. From the facts of the case which were there for consideration before the Full Bench of this Court, I do not find that it was a case where furlough was ordered to be forfeited as penalty on late surrendering of the concerned prisoner. There only on the conduct of the prisoner concerned of late surrendering he was not granted furlough leave. Section 48A of the Prisons Act reads as under:

"Sec.48A:

Punishment for breach of conditions of suspension or remission of sentence or of grant of furlough:-

If any prisoners fails without sufficient cause to observe any of the conditions on which his sentence was suspended or remitted or furlough or release on parole was granted to him, he shall be deemed to have committed a prison offence and the Suptdt. may, after obtaining his explanation, punish such offence by:

(1) a formal warning as provided in clause (1) of sec.46;

(2) reduction in grade if such prisoner has been appointed an officer of prison;

(3) loss of privileges admissible under the remission or furlough or parole system; or

(4) loss of such other privileges as the State Government may by general or special order, direct."

Rule 1287 of the Bombay Jail Manual is also relevant and which lays down that:

"In case of late surrender of breach of any of the conditions of furlough or parole, the necessary punishment or punishments should be awarded by the Suptdt. of Prison with due regard to the circumstances of each case. All the punishments mentioned below or in sec.48-A if the Prisons Act, 1894, need not necessarily be awarded in each case but it is left to the discretion of the Suptdt. to decide which particular punishment or punishments should be awarded. If, in certain cases, the Suptdt. is satisfied that the overstayal was for good or sufficient reasons, he may excuse the prisoner. However, before awarding any punishment, the Suptdt. should invariably obtain a prisoner's explanation in each case of overstayal of period or breach of any conditions of furlough or parole.

(1) A maximum cut of 5 days' remission for each day of overstay;

Provided that where the prisoner has not sufficient remission to his credit, he shall cease to earn remission in future for such period as the Suptdt. may direct;

(2) Stoppage of canteen concession for a period of not less than one month and not more than three months,

(3) Withholding concession of either interviews or letters or both, for a maximum period of three months

(4) In cases of furlough, the furlough period not to be counted towards sentence."

Therefore, furlough is not an absolute right of the prisoner but nonetheless it is a right or privilege admissible and regulated under the provisions of Section 48A of the Prisons Act and Bombay (Furlough and Parole Leave) Rules. From a conjoint reading of these two provisions, one of the punishments which could have been given to the prisoner for late surrender is forfeiture of furlough. In the case of Bhikhabhai Devshi v. State of Gujarat & Ors, (supra) Hon'ble Mr.Justice R.A.Mehta (as

he then was) in para-22 thereof, speaking for the Full Bench observed:

> ".....Under Sec.48A, the punishing authority has the discretion to impose punishments mentioned in that section, for the offences of late surrender. The authority may decide to impose any one or more punishments mentioned in Sec.48A, which includes the punishment of loss of forfeiture or privilege of furlough. Having regard to the facts, circumstances and gravity of late surrender, the authority may decide to impose punishment other than forfeiture of furlough or impose punishment of part forfeiture of furlough...."

Making reference to Rule 1316 of the Bombay Jail Manual, Hon'ble Mr.Justice R.A.Mehta (as he then was), speaking for the Full Bench in para-33 of the judgment, observed: "Rule 1316 of the Bombay Jail Manual provides that "no prisoner shall be punished twice for the same offence". Therefore, once a prisoner is punished for his prison offence of late surrender by the Superintendent, the matter of prison offence will rest there and any other punishment thereafter for the same Act or misconduct is barred". Referring to the facts of that case Mr.Justice Mehta has said, "in the present case the authorities called for the explanation for late surrender by 25 days and imposed punishment of cut in remission of 25 days and as stated in the affidavit-in-reply, for late surrender by 25 days, only the minimum punishment of the cut in remission by 25 days was imposed and that was the only punishment imposed. It is also clearly stated in the affidavit-in-reply that forfeiture of furlough was not a punishment imposed by the jail authorities. It is submitted that forfeiture of furlough is an automatic consequence of operation of Rule 4(10)" (emphasis provided).

##. So the decision of the Full Bench is of little help to the petitioner in this case. Ratio is that where for a prison offence committed by the prisoner, i.e. late surrender, in case the Suptdt. of Jail has not imposed penalty of forfeiture of furlough, then while considering application for grant of furlough leave, late surrender cannot be taken to be a ground of forfeiture of furlough. In that case, the matter has to be considered with due regard to the facts and circumstances as mentioned in the judgment. In the case of Bhupat Vira v. State of Gujarat & Ors. (supra) also, the Division Bench, referring to the Full Bench decision in the case of

Bhikhabhai Devshi v. State of Gujarat & ors. (supra), held:

> The Full Bench negatived the contention that because of the late surrender, due furlough would stand automatically forfeited by virtue of operation of rule 4(1) of the Rules. It is further in terms held by the Full Bench that taking into consideration the object of furlough system, it cannot be said that the benefit an privilege of furlough should be denied to a prisoner merely on the ground of lateness in surrendering after release on parole or furlough, irrespective of any thing and any circumstances justifying or mitigating the default or in any way not showing any tendency to escape or any risk to the society in any manner whatsoever. The Full Bench has considered this aspect in detail. The Full bench has also taken into consideration the facts that (1) voluntary surrenders and the lateness may not be unduly long; (2) may not be without sufficient cause or reason; (3) even if it is for insufficient cause or no cause, the gravity of the offence is require to be decided before imposing punishment. The Full Bench has given an illustration that if a prisoner defaulting in timely surrender who is wanted by the jail authority, is not available at the place where ordinarily he should be and is apprehended by the police or surrenders because of the chase by the authority may not be trusted to be released on furlough again. It cannot be said that the petitioner's case would fall under any of the aforesaid categories. Without properly considering the ratio laid down by the Full Bench of this Court in the aforesaid decision, the authority concerned has illegally denied the petitioner his right to enjoy furlough leave. The petition, therefore, deserves to be allowed."

However, the Division Bench has noticed a fact in that case, and I consider it to be appropriate to make a reference thereof here:

> 6. "... In the instant case also, it is an admitted fact that at the time of imposing the punishment on the petitioner for late surrender by four days, no order was passed to the effect that the petitioner's furlough would be forfeited..." (emphasis provided)

In the case in hand it is not in dispute that for late surrender of the petitioner by 1159 days, interalia the competent authority imposed the penalty of forfeiture of two furloughs of the petitioner.

##. The petitioner applied for furlough leave becoming due as per his case on 13th July 1997 and 13th July 1999. On the day on which the Jail Superintendent passed the order for prison offence, it is not the case of the petitioner that his two furloughs were due. The two future furloughs after this punishment became due on 13th July 1997 an 13th July 1999 and in view of the order of penalty authority has not committed any error whatsoever to reject the application of the petitioner for these furlough leaves. It is not the case as what the learned counsel for the petitioner has made attempt to argue, that the petitioner has been not granted furlough leave on the ground of his late surrender. These two furloughs were not granted to the petitioner for the reason that for his late surrender by 1159 days, his two future furloughs were ordered to be forfeited. To give effect to that order this is only possible order which has rightly been made in this case.

##. I find from the record of this case and it is also not the contention of the learned counsel for the petitioner that that orer has been challenged by petitioner at any point of time before this Court or eve in this special criminal application. In the special criminal application, prayer has been made for declaration that the petitioner is entitle to furlough leave to be granted having earned the same and becoming due for release on furlough in 1997and 1999 on any suitable condition. So very specifically this orer of jail authority for forfeiture of furlough has not been challenged.

##. Next question which falls for consideration of this court is whether merely because at the time when the orer imposing penalty for prison offence as has been inflicted upon the petitioner is not challenged, he is debarred once for all from challenging the same. The ancillary question which falls for consideration of this court is whether this challenge can be made by the concerned prisoner as and when future furlough became due and he applied for the same and the same has been rejected while challenging the rejection order before this Court. Thirdly, a question does also arise for consideration whether on the ground of delay and laches, a prisoner can

be denied of his right to challenge this order of the competent authority?

##. Before proceeding further to consider these three aspects of the matter, it is to be fruitful to here have again reference to the Full Bench decision of this court in the case of Bhikhabhai Devshi v. State of Gujarat & Ors. (supra) again. In this case, the Full Bench of this Court has given out rationale on principle behind Rule 4 of the Prisons (Bombay Furlough and Parol Rules, 1959 and further necessary guidelines as to how the matter has to be considered of imposing the punishment upon the concerned prisoner on his late surrendering to the jail authorities have been given. The Full Bench has said,

27. The rationale and principle behind Rule 4 is clear. The furlough system has been introduced as a measure of penal reform and to harmonise the penal system. The objects as reported by the Jail Reforms Committee are already quoted above. Would such object be achieved by denying furlough to all such prisoners who may have defaulted by surrendering late after release on parole or furlough. Would it be rational and reasonable to hold them ineligible for being released on furlough because they have defaulted by surrendering late in past? Are all such prisoners similarly situated and form one class, irrespective of the facts and circumstances of lateness in surrendering? Is the authority powerless to do justice even when the circumstances so require. As seen earlier, similar question was before the Supreme Court in the case of Ganesh Prasad 1985 (3) SCC 53, as to when a tenant who has failed to deposit the rent as directed, whether the court shall order the defence to be struck off having regard to the use of word `shall', the High Court had answered the question in the affirmative and held that the tenant will have to bear the consequences once the default is found, the courts are powerless and statutory consequences are bound to follow. But the Supreme Court reversed that finding and held that having regard to the legislative intent and object, the word `shall' must mean `may' and the authority

has the discretion to strike off or not to strike off the defence having regard to the facts and circumstances.

28. The object of Parole and Furlough Rules is to humanise penal system and enable the prisoner to maintain continuity with his family life and to deal with the family matters and to save him from evil effects of continuous jail life and to enable him to gain confidence and to maintain constructive hopes and active interest in life. Since these are the clear objects of furlough system, could it have been intended that the benefit and privilege of furlough should be denied to a prisoner merely on the ground of lateness in surrendering after release on parole or furlough, irrespective of anything and any circumstances justifying or mitigating the default or in any way not showing any tendency to escape or any risk to the society in any manner whatsoever? It is not possible to hold that irrespective of all these circumstances, such a prisoner surrendering late is totally disqualified from the consideration for release on furlough. The cases of prisoners who have surrendered late have to be examined on merits and the prison authority will have the power, duty and discretion to consider and to grant or refuse furlough and, therefore, the word `shall' in the context of Rule 4(1)) latter part will have to be read as `may'.

28A The mandatory interpretation of Rule 4(10) sought by the respondents would be inconsistent with the Act and its objects. The furlough system is created by the Act with avowed object of reforming the prisoner and humanising penal system.

29. As far as the first part of Rule 4(10) is concerned, in respect of prisoners who have escaped or attempted to escape, such prisoners, a class by themselves, cannot be trusted for being released on furlough and, therefore, in such cases, the prison

authority would be justified in not considering their request for furlough. However, in cases of late surrender, where there is no element of escape, but merely there is a delay in surrendering, the question will have to be examined on the facts and circumstances and merits of each case. A given case of a prisoner defaulting in timely surrender, who is wanted by the jail authorities and who is not available at the place where ordinarily he should be and who is apprehended by the police or who surrenders because of the chase by the authority, may fall under the first part where he cannot be trusted to be released on furlough again. But such cases are at the other extreme.

30. Other cases of late surrender may be of voluntary surrenders and the lateness may not be unduly long and not without sufficient cause or reason. In such cases sufficiency of causes related to time will certainly have to be considered by the authority. Section 48A itself provides for cases of late surrender. As seen earlier it provides that if any prisoner fails without sufficient cause to observe any of the conditions on which his sentence was suspended or remitted or furlough or release on parole was granted to him, he shall be deemed to have committed a prison offence and the Superintendent may, after obtaining his explanation, punish such offence by different punishments including loss of privilege of furlough. Thus, if he shows sufficient cause, it would not be an offence at all. However, even if the cause is not sufficient, the Superintendent will have to consider his explanation and having regard to the insufficient cause or no cause and the degree of gravity of offence in the facts and circumstances of the case, decide about the quantum and nature of punishment. If he does not think it fit to impost the punishment of forfeiture of furlough and to impose higher punishment, Rule 4(10) cannot be read as a total and

> automatic prohibition in granting furlough to a defaulting and punished prisoner. That would be clearly and directly contrary to sec.48A of the Prisons Act, 1894. Rules have to be consistent with the Act and in order to harmonise Rule 4(10) and make it consistent with the mandate of sec.48A the only way to read the latter part of Rule 4(10) is to hold it to be directory and giving discretion to the authority to consider and to grant or refuse furlough in cases of prisoners who have surrendered late. Any other construction to the contrary, as is canvassed by the respondent authorities would not only make Rule 4(10) latter part unreasonable and arbitrary, but would also directly against sec.48A of the Act. It is well settled that all the provisions have to be read together and construed harmoniously and this rule can be read harmoniously with the Act so as to achieve the object of the Act and the Rules and the construction which is sought to be placed does not in any way go against any of the objects of the Act or the Rules.

##. The order of jail authorities imposing thereunder the penalty upon the prisoner for late surrender is subject to judicial review of this court under Article 226 of the Constitution leaving apart the fact whether it is a quasi-judicial or administrative order. For filing of a writ petition under Article 226 of the Constitution, limitation is not prescribed. The Apex Court has said in many of its judgments that the petitions under Article 226 of the Constitution, only on the ground of delay, rejection of the same may not be justified, unless by this delay and laches on the part of the petitioner made in approaching to this court any of the rights are being accrued to the rival party. The court cannot be oblivious of the fact that this matter is of a prisoner. Taking into consideration their position, otherwise also the matters are to be consider on merits rather than to reject the same on delay and laches. Moreover, when the matter pertains to some concession or privilege of the prisoners which are being denied only on the ground of forfeiture of two future furloughs, it may be justified on his part to challenge that order in Special Civil Application which is against the order of the authority declining furlough leave to him. The petitioner has not

file petition before this Court challenging the said order but he is not estopped once for all from challenging the same before this Court by challenging the orer under which future furloughs when fell due have not been granted because of the said order passed earlier. In this case, furlough leave became due in the years 1997 and 1999 and the petitioner applied for those leaves, the same were rejected, and he file this petition. This is the stage where the petitioner has a right to challenge the order of forfeiture of future furlough. Technically it is correct that their is no prayer made by petitioner in the Special Criminal Application in this regard, but as this matter pertains to a prisoner and secondly as prayer (B) made in para-8 of the Special Criminal Application is sufficiently wide, and it gives all the discretion to this Court to go into, examine and pass appropriate order, on the validity, legality and correctness of the order of the jail authority, imposing penalty of forfeiture of two furlough leaves of the petitioner for jail offence, I consider it to be appropriate to consider the same. The clause-(b) of para-8 reads as under:

"(b) Any other relief that Hon'ble Court deems fit, just and proper"

##. It is equally true that the prayer made in para-8 of the application is not happily worded. It is unfortunate that though the learned counsel who is appearing for the petitioner in this case is a junior advocate, still she has developed a habit of not reading the papers before presenting the same in the Court. Junior counsel should have taken all the care, caution, precaution and made a rule or duty that no paper is presented in the Court before it is read and necessary corrections, if any, to be made, are carried out first. Be that as it may, for two reasons, namely, that this matter pertains to claim or privilege as provided to the prisoner and secondly a sufficiently junior advocate is appearing, I do not consider it to be an appropriate case where this strict rule of procedure has to be made applicable to it.

##. In the facts of this case, it is open to this court to go on the validity of the order of jail authorities imposing thereunder different penalties upon the petitioner for his late surrendering. Otherwise also, these are not the matters which become final or attain finality once for all. As an when a prisoner files an application at the appropriate time, when the furlough becomes due and for the order of the competent authority made for forfeiture of future furlough, it has not to be

granted, the application of the prisoner concerned has to be considered on merits and it is always open to the competent authority to reconsider the matter and if on the basis of the subsequent events which have take place or on the basis of subsequent conduct of the prisoner in jail, if he is satisfied, he can accordingly modified the order made earlier. In these matters, that strict rule of procedure as well as strict rule of providing of review, revision or delay may not be taken into consideration. If we go by the purpose, object and rationale of providing this concession or privilege to the prisoners, it is always open to the jail authorities to reconsider its earlier decision and if it is satisfied that decision needs to be necessarily modified, it may do so. This order made earlier is subject to reconsideration by authorities at a later point of time and in all the eventualities it is always subject to judicial scrutiny of this court under Article 226 of the Constitution so long as the same has not been made earlier. It is not the case of either of the counsel for the parties that earlier the petitioner has challenged the order of the competent authority of forfeiture of his two furlough leaves for prison offence before this court or the supreme court. Where the court exercises it extraordinary equitable jurisdiction technicalities seldom come in its way. It has to see that no prejudice or injustice is caused to the prisoner. These matters are always open to consideration of this court. Approach of the court under Article 226 of the Constitution should have been which is an extraordinary equitable jurisdiction to objectively consider the matters. In this case, the petitioner has not furnished any satisfactory explanation for his late surrender by 1159 days. In the absence of any material and more so cogent evidence, it is difficult to label that order of the competent authority to be illegal or invalid. The petitioner has not furnished any explanation for this long delay made by him in surrendering himself to the jail authorities. He remained absconding from jail for a very very long period and in the facts of this case, imposition of penalty upon the petitioner of forfeiture of his two furlough leaves cannot be said to be illegal or arbitrary or unjustified.

##. As a result of the aforesaid discussion, this special criminal application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)